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OFFICE OF PETITIONS

In re Application of :
Alexandre A. N. Baptista :
Application No. 10/789,456 : DECISION REFUSING STATUS
Filed: February 26, 2004 : UNDER 37 CFR 1.47(b)
Attorney Docket No. 37469-8013.US01 :
For: VACUUM PACKAGING APPLIANCE WITH VACUUM
SIDE CHANNEL LATCHES

This is a decision on the petition under 37 CFR 1.47(b), filed November 22, 2004 (certificate of mailing dated November 19, 2004).

The petition under 37 CFR 1.47(b) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(b).

The above-identified application was filed on February 26, 2004, without an executed oath or declaration or filing fee. Accordingly, a "Notice to File Missing Parts Nonprovisional Application" (the "Notice") was mailed on May 19, 2004, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration, payment of the filing and additional claim fees. The instant petition was filed on November 22, 2004, respectively, along with a request for an extension of time within the fourth month.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,
- (5) proof of proprietary interest, and
- (6) a showing (statement) that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

The instant petition lacks items (1) as set forth above.

Section 409.03(d) of the *Manual of Patent Examining Procedure* provides, in pertinent part, that:

[a] refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not, itself, suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor . . .

The declaration offered by Judy Lagera Vo speaks to the circumstances of the refusal of the inventor to execute the declaration, but only indicates that the Inventor's Declaration and Assignment were sent to the inventor. There is not indication that a complete copy of the application papers (specification, claims, drawings, oath and declaration) was presented to the inventor. Petitioner must demonstrate that an effort was made to present a complete copy of the application papers to the inventor before the inventor can be said to have refused to join the prosecution of the application. Any renewed petition must, therefore, establish that an attempt was made to present a complete copy of the application papers to the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
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In re Application of Alexandre A. N. Baptista
10/789,456

Page 3

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Telephone inquiries should be directed to the undersigned at (571) 272-3222.


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